

Message

**From:** Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]  
**Sent:** 2/21/2019 10:07:15 PM  
**To:** Laycock, Kelly [Laycock.Kelly@epa.gov]  
**CC:** Zapata, Cesar [Zapata.Cesar@epa.gov]; McGill, Thomas [McGill.Thomas@epa.gov]; Purify, Johnnie [Purify.Johnnie@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Nagrani, Kavita [Nagrani.Kavita@epa.gov]  
**Subject:** RE: Action items FL assumption

Thanks!!

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**From:** Laycock, Kelly  
**Sent:** Thursday, February 21, 2019 5:06 PM  
**To:** Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>  
**Cc:** Zapata, Cesar <Zapata.Cesar@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>; Purify, Johnnie <Purify.Johnnie@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>  
**Subject:** Action items FL assumption

Jeaneanne,

Below is a simplified list of the 6 components of the assumption package as well as a breakdown of the 120 day review process and talking points regarding the 404(g) workgroup Tom received from Kathy Hurd. I've also attached those as a word doc in case you'd rather have them to print and the latest 404 assumption and MOA issue papers that were sent to DOI.

Ex. 5 AC/DP

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I believe this includes all the

action items you requested prior to your meeting. Please let me know if I've missed anything or if you have additional questions.

### FL Assumption Talking Points

#### 6 Components:

1. **Governor's letter requesting program** Ex. 5 Deliberative Process (DP)
2. **Complete Program Description** Ex. 5 Deliberative Process (DP)
3. **Attorney General's statement** Ex. 5 Deliberative Process (DP)
4. **EPA/FDEP MOA** Ex. 5 Deliberative Process (DP)
5. **COE/FDEP MOA** Ex. 5 Deliberative Process (DP)
6. **Copies of State Statutes and Regs administering the program** Ex. 5 Deliberative Process (DP)

#### Breakdown of 120 day review:

EPA has 120 days to review a state's assumption request. **\*\*This includes a requirement for at least a 45-day public comment period after Federal Register notification, and at least one public hearing.\*\***

EPA receives state's request to assume program

EPA determines program submission is complete & so notifies state

EPA provides copies of State's submission to Corps, FWS, & NMFS (HQ & regional)

- Corps, FWS, & NMFS comments due within 90 days

EPA initiates consultation with tribes per Executive Order (timeline not specified)

Notices of complete application: Federal Register, newspapers, interested parties

- FR Notice triggers 45-day public comment period
- Public hearing(s) 30+ days after FR Notice publication
- **\*\*Florida has requested in writing that EPA hold multiple public hearings.\*\***

EPA reviews & considers comments received.

- Prepares summary of significant comments, response to such comments
- Responds individually to comments from Corps, FWS, & NMFS

If EPA approves, notify state & publish approval in Federal Register

#### Talking points 404(g) workgroup

- The EPA is undertaking the first comprehensive revision to the existing section 404(g) regulations since 1988.
- This effort aims to modernize these regulations and foster a greater interest by states and tribes in assuming this authority.
- We are currently planning to issue a proposed rule for public comment in Spring 2020 with a final rule in 2021.
- In the fall of 2018 we reached out to our States and Tribes to get their early input to help inform the rulemaking; we asked them to identify areas of the regulations that would benefit from clarity and facilitate their interest in and efforts to assume the program (consistent with Congressional intent).
- Many states have investigated assumption over time but have cited several “barriers” including: program costs, limitations in dedicated federal funding, lack of clarity on program requirements, inability to assume part of the program, and confusion regarding which waters can be assumed and which waters the Corps retains.

For more information, please see: <https://www.epa.gov/cwa404g/current-efforts-regarding-assumption-under-cwa-section-404#out>

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